

**Dave Hardy**  
Secretary of Revenue



**STATE TAX DEPARTMENT**

**Dale W. Steager**  
State Tax Commissioner

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July 10, 2019

Brad McElhinny  
West Virginia MetroNews  
1111 Virginia St. East  
Charleston, West Virginia 25311

**Re: Freedom of Information Act Request Relating to Mountain Blue/Mountain West  
Legal Log No. 18-221B**

Dear Mr. McElhinny:

This letter is in follow-up to our initial<sup>1</sup> and secondary<sup>2</sup> responses to your West Virginia Freedom of Information Act (FOIA) request, dated and received in this office by email on July 14, 2018 at 5:11 PM. Your request read in relevant part as follows:

**From:** Brad McElhinny [Brad.McElhinny@wvradio.com](mailto:Brad.McElhinny@wvradio.com)  
**Sent:** Saturday, July 14, 2018 5:11 PM  
**To:** WV Tax Legal Division [TaxLegal@wv.gov](mailto:TaxLegal@wv.gov); Yates, Harry O [Harry.O.Yates@wv.gov](mailto:Harry.O.Yates@wv.gov)  
**Cc:** Bickoff, Manda O [manda.o.bickoff@wv.gov](mailto:manda.o.bickoff@wv.gov)  
**Subject:** Re: Mountain Blue/Mountain West

Brad McElhinny  
West Virginia MetroNews  
111 Virginia St. E.  
Charleston, W.Va. 25311  
July 14, 2018

Harry O. Yates Jr.  
Disclosure Officer / Attorney  
West Virginia State Tax Department

Cc; Governor's Office

Dear Mr. Yates:

Under the West Virginia Freedom of Information Act, §29-B-1-1 et seq., I am requesting an opportunity to inspect or obtain copies of public records that represent settlement

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<sup>1</sup> Legal Log No. 18-221, dated July 23, 2018.

<sup>2</sup> Legal Log No. 18-221A, dated August 28, 2018.

agreements with any parties related to federal cases 1:2017cv00138 and 1:2017cv00075, where the state had claimed hotel groups and their lenders had collected tax dollars but not properly passed them on to the state. That may include Deutsche Bank Trust Company Americas, as trustee for registered holders of UBS Commercial Mortgage Trust 2012-C1. It also may include Comm 2013-CCRE 12 Suncrest Towne Center Drive, LLC. I also request any email or correspondence containing the key word or terms "Abruzzino" and "Christopher P. Schueller."

The Tax Department apologizes for any inconvenience our delay in responding to that portion of your FOIA requesting [copies] of "any email or correspondence containing the key word or terms 'Abruzzino' and 'Christopher P. Schueller'" may have caused you. The high volume of emails and attachments responsive to these search terms required considerable time on our part to review, print and analyze each for disclosure suitability.

To the extent that any of the "email, [attachments] or correspondence containing the key word or terms 'Abruzzino' and 'Christopher P. Schueller'" requested exists and does not contain tax related information, protected by W. Va. Code 11-10-5d from disclosure, and to the extent that any of the email, [attachments] or correspondence requested is not exempt from disclosure as "[i]nternal memoranda or letters received or prepared by any public body," under W. Va. Code 29B-1-4(a)(8), and to the extent that any of the email, [attachments] or correspondence requested is not exempt from disclosure pursuant to attorney-client privilege, your request is **GRANTED**. The following emails are enclosed in response to your Freedom of Information Act request:<sup>3</sup>

**Table of Responsive Emails**

**ALICIA E CLARK**

From/To	Send Date and Time	Subject
Torlone, Kathy A	7/16/2018 8:47 am	Media Clips 7/14/18
Torlone, Kathy A	4/10/2018 9:24 am	Media Clips 4-10-18
Price, Lalena D	12/11/2017 9:41 am	Media Clips 12/10/17

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<sup>3</sup> The asterisk (\*) at the end of the description of a document in the "**SUBJECT**" column of the Table denotes that document as having been downloaded from PACER (Public Access to Court Electronic Records), an electronic public access service used by the Federal Judiciary. The service allows users to obtain case and document information online from federal appellate, district, **and bankruptcy courts**, and the PACER Case Locator. PACER is **available to anyone** who registers for an account. Because of the public accessibility of records on PACER, **the Tax Department does not provide copies of records obtained from PACER in response to Freedom of Information Act requests.**

Under the Freedom of Information Act, a public agency is obligated to produce records not otherwise exempt from Freedom of Information Act disclosure, that are in an agency's possession, and not already published public records. Public agencies are not obliged under the Freedom of Information Act to spend public monies to compile, assemble, copy and transmit copies of published public records that are clearly, openly and notoriously available on the internet, or in a public library, clearinghouse or other repository of public records. To require reproduction and copying of such published public records by a public agency would represent a redundant and essentially wasteful use of public resources.